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Leslie Haulers, Inc.; C & B Trucking, Inc.; Grigsby Trucking, Inc.; Steve Caldwell Trucking, Inc.; K & P Trucking, Inc.; Vincent Baker Trucking, Inc. and United Mine Workers of America.
Cases 9-CA-32765-1, 9-CA-32765-2, 9-CA-32765-3, 9-CA-32765-4, 9-CA-32765-5, and 9-CA-32765-6

May 31, 1995

DECISION AND ORDER

BY MEMBERS STEPHENS, COHEN, AND
TRUESDALE

Upon charges filed on March 24, 1995, the General Counsel of the National Labor Relations Board issued an order consolidating cases, consolidated complaint and notice of hearing on April 13, 1995, alleging that the Respondents have violated Section 8(a)(5) and (1) of the National Labor Relations Act by refusing the Union's request to bargain following the Union's certification in Case 9-RC-16424. (Official notice is taken of the "record" in the representation proceeding as defined in the Board's Rules and Regulations, Secs. 102.68 and 102.69(g); *Frontier Hotel*, 265 NLRB 343 (1982).) The Respondents filed an answer admitting in part and denying in part the allegations in the complaint.

On May 4, 1995, the General Counsel filed a Motion for Summary Judgment and Memorandum in Support. On May 8, 1995, the Board issued an order transferring the proceeding to the Board and a Notice to Show Cause why the motion should not be granted. On May 22, 1995, the Respondents filed a response.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

Ruling on Motion for Summary Judgment

In their answer the Respondents admit their refusal to bargain, but attack the validity of the certification on the basis of their objections to the election in the representation proceeding.

All representation issues raised by the Respondents were or could have been litigated in the prior representation proceeding. The Respondents do not offer to adduce at a hearing any newly discovered and previously unavailable evidence, nor do they allege any special circumstances that would require the Board to reexamine the decision made in the representation proceeding. We therefore find that the Respondents have not raised any representation issue that is properly litigable in this unfair labor practice proceeding. See *Pittsburgh*

Plate Glass Co. v. NLRB, 313 U.S. 146, 162 (1941). Accordingly, we grant the Motion for Summary Judgment.

On the entire record, the Board makes the following

FINDINGS OF FACT

I. JURISDICTION

At all material times, the Respondents have been employers engaged in the business of coal hauling and have voluntarily responded collectively to the demands for recognition by the Union and collectively participated in the representation proceeding.

At all material times, the Respondents have maintained places of business in the Commonwealth of Kentucky. During the 12-month period preceding issuance of the complaint, the Respondents collectively, in conducting their business operations, purchased and received at their Kentucky operations diesel fuel valued in excess of \$50,000 from another enterprise located within the Commonwealth of Kentucky which is engaged in interstate commerce.

During the 12-month period preceding issuance of the complaint, the Respondents collectively, in conducting their business operations, derived gross revenues in excess of \$50,000 for the transportation of coal within the Commonwealth of Kentucky as an essential link in the interstate transportation of coal to points outside the Commonwealth of Kentucky.

We find that the Respondents are collectively employers engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act,¹ and that the Union is a labor organization within the meaning of Section 2(5) of the Act.

II. ALLEGED UNFAIR LABOR PRACTICES

A. The Certification

Following the election held September 20, 1994, the Union was certified on February 24, 1995, as the collective-bargaining representative of the employees in the following appropriate unit:

All full-time and regular part-time truck drivers and maintenance employees employed by the [Respondents] at their Lost Mountain jobsite located near Hazard, Kentucky, excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

The Union continues to be the exclusive representative under Section 9(a) of the Act.

¹ The Respondents admit in their answer that they are collectively engaged in commerce within the meaning of Sec. 2(2), (6), and (7) of the Act.

B. *Refusal to Bargain*

On March 30, 1995 the Union requested the Respondents to bargain and, since the same date, the Respondents have refused. We find that this refusal constitutes an unlawful refusal to bargain in violation of Section 8(a)(5) and (1) of the Act.

CONCLUSION OF LAW

By refusing since March 30, 1995, to bargain with the Union as the exclusive collective-bargaining representative of employees in the appropriate unit, the Respondents have engaged in unfair labor practices affecting commerce within the meaning of Section 8(a)(5) and (1) and Section 2(6) and (7) of the Act.

REMEDY

Having found that the Respondents have violated Section 8(a)(5) and (1) of the Act, we shall order it to cease and desist, to bargain on request with the Union and, if an understanding is reached, to embody the understanding in a signed agreement.

To ensure that the employees are accorded the services of their selected bargaining agent for the period provided by the law, we shall construe the initial period of the certification as beginning the date the Respondent begins to bargain in good faith with the Union. *Mar-Jac Poultry Co.*, 136 NLRB 785 (1962); *Lamar Hotel*, 140 NLRB 226, 229 (1962), *enfd.* 328 F.2d 600 (5th Cir. 1964), *cert. denied* 379 U.S. 817 (1964); *Burnett Construction Co.*, 149 NLRB 1419, 1421 (1964), *enfd.* 350 F.2d 57 (10th Cir. 1965).

ORDER

The National Labor Relations Board orders that the Respondents, Leslie Haulers, Inc., C & B Trucking, Inc., Grigsby Trucking, Inc., Steve Caldwell Trucking, Inc., K & P Trucking, Inc., and Vincent Baker Trucking, Inc., Hazard, Kentucky, their officers, agents, successors, and assigns, shall

1. Cease and desist from
 - (a) Refusing to bargain with the United Mineworkers of America as the exclusive bargaining representative of the employees in the bargaining unit.
 - (b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of the rights guaranteed them by Section 7 of the Act.
2. Take the following affirmative action necessary to effectuate the policies of the Act.
 - (a) On request, bargain with the Union as the exclusive representative of the employees in the following appropriate unit on terms and conditions of employment and, if an understanding is reached, embody the understanding in a signed agreement:

All full-time and regular part-time truck drivers and maintenance employees employed by the [Re-

spondents] at their Lost Mountain jobsite located near Hazard, Kentucky, excluding all office clerical employees and all professional employees, guards and supervisors as defined in the Act.

(b) Post at their jobsite in Hazard, Kentucky, copies of the attached notice marked "Appendix."² Copies of the notice, on forms provided by the Regional Director for Region 9, after being signed by the Respondent's authorized representative, shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days in conspicuous places including all places where notices to employees are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material.

(c) Notify the Regional Director in writing within 20 days from the date of this Order what steps the Respondent has taken to comply.

Dated, Washington, D.C. May 31, 1995

James M. Stephens, Member

Charles I. Cohen, Member

John C. Truesdale, Member

(SEAL) NATIONAL LABOR RELATIONS BOARD

²If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES POSTED BY ORDER OF THE NATIONAL LABOR RELATIONS BOARD An Agency of the United States Government

The National Labor Relations Board has found that we violated the National Labor Relations Act and has ordered us to post and abide by this notice.

WE WILL NOT refuse to bargain with United Mine Workers of America as the exclusive representative of the employees in the bargaining unit.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce you in the exercise of the rights guaranteed you by Section 7 of the Act.

WE WILL, on request, bargain with the Union and put in writing and sign any agreement reached on

terms and conditions of employment for our employees in the bargaining unit:

All full-time and regular part-time truck drivers and maintenance employees employed by us at our Lost Mountain jobsite located near Hazard, Kentucky, excluding all office clerical employees

and all professional employees, guards and supervisors as defined in the Act.

LESLIE HAULERS, INC.; C & B TRUCKING, INC.; GRIGSBY TRUCKING, INC.; STEVE CALDWELL TRUCKING, INC.; K & P TRUCKING; AND VINCENT BAKER TRUCKING, INC.